

Hodges, upon the ground, that their judgment was a prior lien upon the real estate mortgaged to said Hodges; which petition was, after argument, dismissed on the 5th June, 1847, because "proceedings were still pending to revive the judgment, and until a fiat was obtained, it must be presumed to have been executed or satisfied." On the 28th June, 1847, the sales were finally ratified, no objections having been filed, and on the 30th July, 1847, an order passed, confirming an auditor's report, by which the entire net proceeds, were applied to the payment in part of the mortgage debt of the complainant, Hodges.

At the October term, 1847, of Anne Arundel County Court, a fiat was duly entered upon the scire facias, which had issued to revive the judgment in favor of Speed and Pennington, subject to Sevier's discharge under the insolvent laws, and an execution of fieri facias, was subsequently sued out upon the judgment so revived, and duly levied upon the houses and lots in the city of Annapolis, which had been purchased by the complainants, Duvall and Saussar.

After this execution had been levied, Duvall and Saussar, on the 15th of January, 1848, filed, in the case of Hodges vs. Sevier and others, a petition, praying, that the judgment in favor of Speed and Pennington, then about to be enforced against the property purchased by them, might be paid out of the funds, in the hands of the trustee who made the sales, or that they might be authorized to pay it, and have the amount so paid, discounted from the purchase money thereafter to become due from them. To this petition, an answer was filed by Hodges, the mortgagee, objecting to the relief sought, upon the ground, that the petitioners purchased without any warranty of title, and insisting, that if the court could interfere in behalf of the purchasers, it should do so by rescinding the sale, and as the property sold very low, giving him an opportunity to secure a larger portion, or the whole of his debt. The matter of this petition, was argued by counsel, and on the 6th March, 1848, an order was passed dismissing the petition, and an opinion filed by Johnson, Chancellor, from which the following extracts are taken :